

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 06-0261
GROSS RETAIL TAX
For 2004**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Giveaway Prize – Gross Retail Tax.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-1(a); IC § 6-2.5-3-2(a); 45 IAC 2.2-3-5(a); Sales Tax Information Bulletin #40 (August 1991).

Taxpayer argues that it is not responsible for paying use tax on the acquisition of a motorcycle which taxpayer gave away as a contest prize.

STATEMENT OF FACTS

Taxpayer is an Indiana business which owns several subsidiaries. The Indiana Department of Revenue conducted an audit review of taxpayer's business records resulting in the assessment of use tax. Taxpayer disagreed and submitted a protest to that effect. Taxpayer's protest was assigned to the Hearing Officer, a hearing was scheduled, notice of the hearing was provided, but taxpayer declined to participate. This Letter of Findings results.

I. Giveaway Prize – Gross Retail Tax.

DISCUSSION

One of taxpayer's subsidiaries purchased a motorcycle on which no sales or use tax was paid. Taxpayer intended to acquire the motorcycle to use as a giveaway prize. The Department determined that taxpayer owed use tax, but taxpayer disagreed.

Indiana imposes a sales tax on retail transactions and a complimentary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq.

IC § 6-2.5-3-2(a) states that, "An excise tax, known as the use tax, is imposed on the storage, use or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction" IC § 6-2.5-3-1(a) states that, "'Use' means the exercise of any right or power of ownership over tangible personal property."

On the subject of vehicles such as taxpayer's motorcycle, 45 IAC 2.2-3-5(a) in part states that, "For purposes of the state gross retail tax and use tax, transactions representing isolated or occasional sales of vehicles required to be licensed by the state for highway use in Indiana shall constitute retail transaction under the provisions of this section."

Taxpayer acquired the motorcycle without paying sales tax. Because taxpayer did not pay sales tax at the original point-of-purchase, the cost of the motorcycle was subject to Indiana's use tax. Even though taxpayer *gave* the motorcycle away, the taxpayer exercised "right or power of ownership" over the motorcycle; the acquisition of the motorcycle, the period of time during which taxpayer retained possession of the motorcycle, the decision to award the motorcycle as a contest prize constituted taxpayer's "use" of that vehicle.

The law is summarized plainly and simply set out at Sales Tax Information Bulletin #40 (August 1991), which states that, "Tangible personal property, such as a radio, compact disc or an automobile, that is given away as a gift or a contest prize is subject to either sales or use tax. The person or organization liable for the tax is the person who gives the property away and not the person who receives the prize or gift."

The audit was correct in assessing use tax on taxpayer's acquisition and "use" of the motorcycle.

FINDING

Taxpayer's protest is respectfully denied.

DK/DP/BK – February 8, 2007.